**IN THE HIGH COURT OF JUDICATURE**
**AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO.7503 OF 2006**

Jagdish Jaisingrao Lingras & Anr. ...Petitioners
Vs.
Vijay Sadanand Dhere & Ors. ...Respondents

Mr. Amit Borkar, Advocate for Petitioners
Mr. S.S. Patwardhan, Advocate for Respondents 1 to 3
Mrs. S.S. Bhende, AGP for Respondents 4 & 5

**CORAM: SMT.RANJANA DESAI &**
**SMT.ROSHAN DALVI, JJ.**
**DATED: 5TH DECEMBER, 2007**

**JUDGMENT (Per Smt. Roshan Dalvi, J.)**

1. The petitioners and respondents 1,2 and 3 are the Trustees of a public Trust which run and manage a secondary school called Maharani Radhabai Vidyarthi Vasatigrah, at Radhanagari, District: Kolhapur. The petitioners and respondents 1,2 and 3 are the first Trustees appointed under the Scheme framed to run the above school in 1987 as per the order of the learned Deputy Charity Commissioner dated 31st August, 1989 passed under Section 50-A(1) of the Bombay Public Trust Act, 1950 (BPT Act).

2. The petitioners have challenged the order of respondent No.4

approving the school committee required for running the said school.

3. The rights, duties, liabilities and responsibilities of the petitioners as well as respondents 1,2 and 3 can be seen from the Scheme, Exhibit-B to the Petition read with the statutory rules for schools framed under the Maharashtra Employees of Private Schools Act, 1981 and called the Maharashtra Employees of Private Schools Rules, 1981.

4. Under the Scheme of 1989 the objects are to run the school for educational purpose. The Trustees are to be elected every 5 years. There should be minimum 7 and maximum 11 Trustees. Representation of all kinds of members on the Trust is to be made. Co-option of 2 members by the Trustees is permitted. The Trustees would retire by rotation after 5 years. Elections of the Trustees would be after 5 years. There is not much dispute with regard to these aspects of the Scheme. It is contended by the petitioners that respondents 1,2 and 3 cannot take part in any meetings or vote thereat, because the Trustees have not been appointed and the Change Report in respect thereof, has not been accepted by the learned Deputy Charity Commissioner. It is with this aspect that the parties are in dispute.

5. It would, therefore, be appropriate to set out this part of the Scheme to understand the disputed contentions.

*"Unless and until the change report of the newly elected Trustees is accepted by this office, they shall not be entitled either to vote or to participate in any of the meetings of the Trustees during the pendency of the change report". (emphasis supplied)*

6. The above portion of the Scheme follows the portion relating to election every 5 years and retirement by rotation of the Trustees. A reading of this clause shows that until the Change Report is filed and accepted, the newly appointed Trustees would not be entitled to vote or participate in any meetings.

7. It is contended by the petitioners that the aforesaid restriction is upon respondents 1,2 and 3. That contention is wholly incorrect and totally misconceived. The Advocate on behalf of the petitioners urged us to consider that because elections have not been held and the Change Report has not been accepted the acts on the part of respondents 1,2 and 3 in voting and participating in any of the meeting of the Trust is invalid and vitiated. We may mention straight way that the position is quite the contrary. A reading of the aforesaid clause shows that until the next election when the newly appointed Trustees can act after their change report is filed and accepted by the learned Deputy Charity Commissioner, those newly appointed Trustees (and not the present Trustees being respondents 1,2 and 3) would not be entitled to vote or participate in any of the meetings of the Trustees.

8. Respondents 1,2 and 3 are in active management. The petitioners also desire to be in active management. They are at daggers' drawn. It will be material to see their conduct.

9. The petitioner No.1 filed an application before the learned Deputy Charity Commissioner for a Change Report in respect of the new members, they sought to include in the Trust. That report has come to be rejected by an order dated 12th January, 1996. That order is detailed and well reasoned. The order does not only reject the application of the petitioners, the reasoning in the order shows that it is rejected because it is a false and fabricated report based on fake and fabricated documents. Under that report the learned Deputy Charity Commissioner, Kolhapur has instituted a suo motu inquiry under Section 41-A of the BPT Act, inter alia for the appointment of the Election Officer to enroll members, to hold the election of the Trustees. He has also directed a report to be made to the District Judge at Kolhapur to consider taking proper criminal action against petitioner No.1 herein. He has impounded the documents produced by the petitioner.

10. In Appeal therefrom, the said order has been confirmed. The Appeal has been dismissed. The Deputy Charity Commissioner, Kolhapur has been directed to lodge complaint against the first petitioner herein under Section 195 of the Cr.P.C by the order of the Joint Charity Commissioner dated 30th December, 1999. We

may mention that the Advocate for the petitioners argued that the order was modified in Appeal. It was not. It was confirmed. The Appeal stood rejected. The criminal complaint was directed to be filed. The impounded documents remained as such.

11. We are told that this order was challenged in this Court in First Appeal No.256 of 2005. By an order dated 24th March, 2005 by one of us (Smt. Ranjana Desai, J.) the Appeal came to be rejected at the stage of admission itself.

12. The SLP filed therefrom has also been rejected.

13. Such is the conduct of atleast one of the Trustees of the suit Trust which runs an educational institution.

14. The respondents 1,2 and 3 are the other Trustees. For running of the school, a school committee is mandatorily required to be formed under Rule 1(a) of Schedule-A and under Rule 2(1) (i) of the Maharashtra Employees of Private Schools Rules, 1981. Every school is required to have a School Committee which will be responsible to the government for the management of the School. Its formation is, therefore, an essential and mandatory requirement.

15. Under Rule 2 of the aforesaid Schedule the School Committee is required to consist of 4 representatives of the management being one President or his nominee and 3 members nominated

by the governing body, one permanent senior-most teacher and one head master constituting the non-teaching staff.

16. Under the second proviso to the aforesaid Rule 2 the governing body has the right to change one or more of the nominees after completion of one year. Respondents 1,2 and 3 formed the governing body. Respondents 1,2 and 3 desired to change one of the nominees. The petitioners have objected to any change, just as they object to any voting and participating in any meetings. The petitioner No.1, therefore, filed application under Section 41(a) of the BPT Act before the learned Deputy Charity Commissioner for injunction restraining the respondents from participating in any meeting. The very action smacks of malafides. An educational institution is not expected to run the management consisting of Trustees of a private school which is a charitable Trust if the Trustees are not to participate in any meeting or vote thereat. The application of the petitioners came to be disposed of by the Deputy Charity Commissioner, Kolhapur by an order dated 24th August, 2005 under which injunction pressed by the petitioners was refused, with regard to holding of meetings, and specially, the meeting which was to be held on that day itself. However, the respondents 1,2 and 3 were directed not to take any decision or pass any resolution in respect of election of the board of Trustees. Hence, the competent authority allowed the respondents inter alia to change their nominees on the school committee under second proviso to Rule 2 of Schedule-A of the MEPS Rules, 1981.

17. It is argued before us that the term of the school committee is co-terminus with that of the management and therefore, until election, a previous management continues and their term would expire only when a Change Report is accepted by the Deputy Charity Commissioner. Therefore, earlier management would remain and continue to manage the affairs of the school.

18. The new school committee was appointed on 3rd February, 2005 by a resolution passed on that date. The petitioner No.1 has challenged that resolution also. A civil suit has been filed in which also the petitioners have not obtained any relief. The said resolution was communicated to the Education Officer. The Education Officer heard the parties including the petitioners and has passed an impugned order on 30th October, 2006 approving the school committee consisting of the members stated in the report.

19. The petitioners have challenged the said appointment on the ground that the respondents 1,2 and 3 could not vote or participate in any of the meetings of the Trust pending the Change Report. The Change Report submitted by the petitioners has been rejected as aforesaid. The aforestated clause in the Scheme does not apply to respondents 1,2 and 3 (it would apply to the newly elected Trustees). Respondents 1,2 and 3 are not therefore, prohibited under the Scheme for voting and participating at the meetings of the Trust. This aspect has been

considered by the learned Deputy Charity Commissioner in the order dated 24th August, 2005 also. Considering the aforesaid facts the impugned order is passed by respondent No.4. We find no infirmity in the said order.

20. They have approached this Court with unclean hands. They have sought to distort the purport and intent of the Scheme governing the Trust running an educational institution. Their action is accentuated by malafides.

21. The petition is dismissed with costs fixed at Rs.3000/-.

22. Interim stay already granted is extended for 6 weeks.

**(SMT. ROSHAN DALVI, J.)** **(SMT.RANJANA DESAI, J.)**